

MEETING MINUTES CITY OF MILPITAS

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, December 19, 2006
Time: 6:00 PM
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

ROLL CALL

Mayor Esteves called the meeting to order at 6:00 PM.

PRESENT: Mayor Esteves, Vice Mayor Livengood, Councilmembers Giordano, Gomez and Polanski

CLOSED SESSION

Mayor Esteves publicly stated the Council would immediately convene into Closed Session to discuss labor negotiations with the following employee groups: Milpitas Employee Association (MEA), Milpitas Supervisors Association (MSA) Milpitas Mid-Management and Confidential Employees (LIUNA), and International Association of Fire Fighters (IAFF).

The Council convened in Open Session at 7:00 PM, with no announcements.

CLOSED SESSION ANNOUNCEMENT

None

PLEDGE

Boy Scouts Troop No. 92 Color Guard led the Pledge of Allegiance.

INVOCATION

One minute of silence was observed.

MINUTES

MOTION: approve City Council meeting minutes of November 29 and December 5, 2006

Motion/Second: Councilmember Polanski/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

SCHEDULE OF MEETINGS

MOTION: to approve the Schedule of Meetings (Monthly Planner calendar) for December 2006 and January 2007 as submitted

Motion/Second: Vice Mayor Livengood/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

PUBLIC FORUM

Bill Weisgerber, addressed the City Council on the American Cancer Society's annual "Relay for Life" fundraising event, to be held June 22-23, 2007 at the Milpitas Sports Center. He requested support again from the City in partnership with the organization.

Frank DeSmidt, representing the Milpitas Chamber of Commerce, announced the 50th Anniversary of the Chamber celebration, a Crab Feed event on Friday March 2, 2007. He had tickets available for sale.

ANNOUNCEMENTS

City Manager Tom Williams announced that City Hall will be closed Friday, December 22 and Monday, December 25 for the Christmas holiday.

Councilmember Polanski attended the Earthlink WiFi cable cutting ceremony this afternoon, and all were excited about free wireless internet to be offered. Also, she offered Happy Holidays to all.

Mayor Esteves honored the Santa Clara County Library as the No. 1 public library in America. For the fifth time, SCCL has been named best in the nation for high quality and best service, one of only two in California.

**ANNOUNCEMENT OF
CONFLICT OF INTEREST**

None

APPROVAL OF AGENDA

Motion: to approve the meeting agenda as submitted

Mayor Esteves asked to move Item No. 5 as the first item for discussion on the agenda.

Motion/Second: Vice Mayor Livengood/Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Staff requested Item No. 4 be removed from the consent calendar.

Motion/Second: Vice Mayor Livengood/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

* 9. Approve One
Organizational Youth Sports
Assistance Fund Grant

Approved organizational Youth Sports Grant for the North Valley Milpitas Bobby Sox for \$1,000 leaving a balance of \$1,000 for the remainder of the fiscal year.

* 10. Authorize the Purchasing
Agent to Dispose of Four
Surplus Vehicles/Equipment

Approved disposal of the following vehicles/equipment at auction for the estimated values noted:
1) Motorcycle, Police, 1997 Kawasaki, KZ-1000, License #E82K89 – estimated value: \$1,000 to \$2,500.
2) Motorcycle, Police, 2000 Kawasaki, KZ-1000, License #E93K60 – estimated value: \$1,000 to \$2,500.
3) Mower, Riding, 1997 Torro Grounds Master, Serial #30788-70901 – estimated value: \$500 to \$1,500.
4) Paver, Layton, Asphalt, Model H-500B, Serial #H1711-B-8 – estimated value: \$1,000 to \$2,500.

* 13. Adopt Ordinance No.
38.769 for zone changes

Waived the second reading and adopted Ordinance No. 38.769 for Zone Change No. ZC 2005-1, related to the Mixed Use Development at 1880 N. Milpitas Blvd.

* 14. Adopt Resolution
Approving Sobriety Checkpoint
Program with UC Berkeley

Adopted Resolution No. 7644 approving the agreement with the University of California, Berkeley for a Sobriety Checkpoint Program and authorized the Police Chief to execute an agreement with the University, subject to approval as to form by the City Attorney.

* 15. Adopt Resolution to
Establish a Preference for
Milpitas Unified School District
Teachers for Affordable Housing
Units at Centria and Paragon
Residential Projects

1) Adopted Resolution No. 7645 with the required findings that the City of Milpitas has a compelling and legitimate interest in having Milpitas Unified School District teachers live within the City of Milpitas.
2) Directed staff to allocate eight very low- and low –income affordable housing units in the Centria and Paragon residential projects for Milpitas Unified School District teachers.

* 16. Adopt a Resolution
Approving Employment
Agreement for the City Manager

Adopted Resolution No. 7647 approving the Employment Agreement between the City of Milpitas and Thomas C. Williams pursuant to which Mr. Williams will serve as City Manager and Executive Director of the Milpitas Redevelopment Agency.

* 17. Award contract for Median Mulch and Street Tree Maintenance for Great Mall Parkway, to Forster & Kroeger Landscape

Authorized the City Manager to execute a contract for Project No. 4133 with Forster & Kroeger Landscape Maintenance, Inc. in the not-to-exceed amount of \$52,975.00, including tax, subject to approval as to form by the City Attorney.

* 18. Approve Amendment No. 3 with Harris & Associates for Plan Check Services

Approved agreement amendment No. 3 with Harris & Associates and authorized the City Manager to execute the amendment, subject to approval as to form by the City Attorney. Approve a budget appropriation in the amount of \$100,000 from the General Fund to the Engineering budget, to be reimbursed by private development funds.

PUBLIC HEARINGS

1. 2007 Citizens Options for Public Safety – COPS Grant

Police Chief Dennis Graham presented the spending plan for the COPS grant, as proposed in his written memo. Vice Mayor Livengood inquired about the online reporting system. Chief Graham explained where citizens could report certain crimes on the internet website, to make a report over the internet.

Councilmember Polanski asked about the teen academy and when it will start.

Councilmember Gomez asked if there were any ongoing costs for the programs planned. The Chief responded that these were all one time expenditures, except for the online reporting system for which there may be some yearly costs.

Mayor Esteves inquired about the DVD duplicator and storage unit. Chief Graham explained that the cost included the furniture storage unit as the larger expense.

Mayor Esteves opened the public hearing; and, no comments were heard.

(1) Motion: to close the Public Hearing

Motion/Second: Councilmember Giordano/Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

(2) Motion: Approve the appropriation of \$127,051 into the Police Department operating budget for expenditure of the COPS grant

Motion/Second: Councilmember Giordano/Vice Mayor Livengood

Motion carried by a vote of: AYES: 5
NOES: 0

2. Farmer's Market related Zoning Changes including Ordinance No. 38.770

Planner Cindy Maxwell explained the purpose of this item was to provide a variety of locations for Farmers Market, to streamline the process for approval of a market, and to make edits to the General Plan and the Zoning Ordinance.

Staff recommended the creation of an Institutional "I" land use classification, including public lands, and to define "Farmers Market" allowing farmers markets in other districts too (such as commercial zoning).

Councilmember Polanski noted that the recommended changes went before the Milpitas Unified School District Board of Trustees for their information, also.

Rob Means, 1421 Yellowstone, had a question for staff, asking what was required for residents to participate in Farmers Market. He posed the question to the Mayor, who invited staff to reply.

Ms. Maxwell informed Mr. Means that his questions were best responded to by the Pacific Coast Farmers Market. Online he could find out some of the answers.

John Silveira, manager of Pacific Coast Farmers Markets, explained that a person who wanted to be a Market vendor would fall under state codes and his association's rules, following stringent food safety rules, and including insurance requirements, along with a state Department of Agriculture certificate. The individual Farmers Market manager was responsible for a mix of products for sale in the market.

Mayor Esteves opened the public hearing for testimony; none heard.

(1) Motion: to close the public hearing

Motion/Second: Vice Mayor Livengood/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Vice Mayor Livengood inquired what would be the outcome if all of these steps moved forward. Staff responded that the Pacific Coast Farmers Market could work with the property owners such as the School District, then apply to the Planning Department for a use permit, and go before the Planning Commission for approval of a permit to operate.

Mayor Esteves asked how soon all of those actions could occur. Mr. Silveira said he would like to do it with a "big splash" with a grand re-opening, probably in April or May when the "sugar crops" arrive at markets in northern California.

(2) Motion: Adopt Resolution No. 7643 adding the "Public Facilities" designation to the General Plan

Motion/Second: Vice Mayor Livengood/Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

City Attorney Steve Mattas read the title of Ordinance No. 38.770 "An Ordinance of the City of Milpitas Amending Chapter 10, Title XI of the Milpitas Municipal Code Creating an Institutional "I" Zoning District and Authorizing Farmers' Markets"

(3) Motion: waive the first reading beyond the title of the Ordinance No. 38.770
- Zoning Text Amendment No. ZT 2006-06

Motion/Second: Councilmember Gomez/Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

(4) Motion: introduce Ordinance No. 38.770

Motion/Second: Councilmember Gomez/Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

3. Appeal of Planning Commission Decision regarding Jerry's Market Use Permit Amendment

City Manager Tom Williams announced that the attorney for the applicant faxed a written letter of request for a continuance of the public hearing to a later date. Mayor Esteves noted his preference to open the public hearing, hear any testimony from the public and continue it to the next meeting. There was a general consensus by the

Council for that approach.

Staff Planner Cindy Hom reviewed the appeal application before the Council, an appeal of the Planning Commission's 3-2 vote to deny a Use Permit on October 25, 2006. She reviewed the basis on which the owners of Jerry's Market filed the appeal (in staff report). She presented the staff's recommendation to uphold the Planning Commission's decision.

Mayor Esteves opened the public hearing for testimony.

Speakers:

Rod Meir, resident on Gibbons Ct, Vice President of Pines Home Owners Association, had been to many meetings, and voiced strong opposition to the liquor license. He was opposed to the issue being continued to the next meeting and wanted Council to vote this evening to deny the license. The store owner was putting off the homeowners, he felt.

Fae Arroyo, long time resident of the Pines, believed the owner Mr. Ali was not a responsible owner of stores. He had experienced problems with other stores he owned, with sales to minors of alcohol. She was opposed.

Rosemary Fowler, of Rosetree Ct., had attended many meetings on this topic already. She was pleased that the Planning Commission listened to the residents by voting down the request. She was opposed to it and asked Council to listen to the Pines residents.

Rick Warren, attorney for Jerry's Market owner Mr. Aslam Ali, explained the request for appeal, and that due to the fact that many supporters of the application were not available this evening, the continuance was requested. He noted there were Pines residents who were in favor of Jerry's Market request who wanted to give testimony to the City Council.

Vice Mayor Livengood was not entirely convinced of the request for continuance.

Councilmember Giordano leaned toward listening to the rest of the testimony, and wanted to honor the applicant's request for continuance.

Councilmember Gomez stated it had been Council practice to honor requests for continuance in the past, so he wanted to do so with this request.

Councilmember Polanski noted the City received the request earlier today, from City staff. She would like to hear from everyone, including residents, and since Council had honored continuances in the past, she was favorable to the request.

Vice Mayor Livengood was emphatically disappointed that the applicant was not present and felt he should have been.

Mayor Esteves said it was tough for the City Council, for the sake of fairness, when you always want to listen to more people on this issue, and all testimony tonight was legitimate. He also did not want to pre-judge the applicant.

Councilmember Polanski noted that she did receive a five page letter from Mrs. Doyle with further opinion on the Jerry's Market issue.

Speakers:

John Shields, Lonetree Ct, was upset at the tactic used by Mr. Ali again, to put off this issue. He did not want the alcohol license issued at Jerry's Market.

Romy Pajardo, resident of Lonetree Ct. behind the market and had lived there since 1969 and raised his kids there. He had moved to Livermore, and rented out his Milpitas house. He had concerns for safety of his future tenants, and was against liquor sales.

Gary Cerezo, lived on Blue Spruce Way, five minutes from Jerry's. He mentioned another store, which was only a few minutes farther away. He did not want to politicize the issue during the election time. He remembered Mr. Ali coming to his home, asking for support for his petition, but Mr. Cerezo was opposed to the license.

Rob Means, of Yellowstone Ave, spoke on behalf of Jerry's Market at the Planning Commission in the fall. He was suspicious of the request to have a continuance. He felt the day after New Year's Day was not a good date. Maybe the continuance could be conditional on current owner to appear at a later date in the new year.

Phil Tuet was opposed to Jerry's Market getting the license. He asked Council to show respect to those who showed up this evening and for the process. The Pines Home Owners Association showed its disfavor already.

Loren Plum, of Green Tree Way, lived across the street behind Jerry's. He was sad that this issue kept getting extended. He was unhappy with Mr. Ali's assurances to date and was opposed to the liquor license.

Mike Novotny, lived immediately behind Jerry's for close to 30 years. He felt the January 2 date was a problem. Beer and liquor did not belong at this store in this neighborhood. In the past, the request was turned down numerous times in years past and he was opposed.

Vice Mayor Livengood asked Attorney Warren why his client was not here. The Attorney did not know specifically and expressed extreme disappointment that the applicant could not show up.

Councilmember Polanski agreed with Mr. Livengood that it was bad that Mr. Ali was not present. She suggested this public hearing be continued to January 16, not January 2, and that it go on the agenda as the first item.

Vice Mayor Livengood moved to close the public hearing. There was no second to his motion, and thus it failed.

(1) Motion: to continue the public hearing to January 16, as requested by the attorney for applicant Aslam Ali, as the first item on agenda on that date

Motion/Second: Councilmember Gomez/Councilmember Giordano

Motion carried by a vote of: AYES: 4
NOES: 1 (Livengood)

City Council then took a break at 9:25 PM and reconvened at 9:34 PM. There was a request for the "wifi" report to be heard after Item No. 4, Odor Control report.

UNFINISHED BUSINESS

4. Odor Control Comprehensive Action Plan update

City Engineer Greg Armendariz spoke to the Council and introduced staff from Allied Waste - Gil Cheso and Dale Urkey of the San Jose/Santa Clara Water Pollution Control Plant.

The City Engineer reviewed history of the odor control program, launched three years ago. There had been many meetings with stakeholders. The program tracked the number of complaints, and those have been reduced over three years. He gave some details on how waste was processed, and that odors were controlled by the producers of those based on wind, weather, and other conditions. Mr. Armendariz reviewed improvements by the three key stakeholders: Allied Waste, the Water Pollution Control Plant, and the Bay Area Air Quality Management District.

The public should continue to call 1-800-334-6367 with any odor complaints.

Councilmember Polanski appreciated all the efforts made to date. She knew the City was trying to get the phone number out to people. She suggested there should be an additional effort like a business card sized notice to advertise the complaint line phone number. Staff appreciated the suggestion for outreach.

Mayor Esteves had asked for this item to be on the agenda and asked for speakers.

Speakers:

Kirit Patel, of Balboa Drive, stated he was directly impacted by the odors in Milpitas. He was aware of the three main sources of odors. It was not enough what the City had done, and he wanted the odors to be eliminated. Furthermore, he had personally called the odor control hotline about 20 times.

Mayor Esteves asked the City Engineer about the movement of sludge at the Treatment Plant. When it dried up, and a large amount of earth was moved, it did cause odor, and more calls came in complaining. Plant Manager Dale addressed the movement of a stockpile that occurred in mid-November and generated a lot of calls.

Maria Lemery, Milpitas resident, spoke about the sludge ponds and movement of that material. She asked about the hours for the response to complaints, after regular daytime hours. Staff explained that complaints received during business hours (8 AM to 5 PM) get an immediate response and the District sends out someone to investigate. After hours, the BAAQMD must receive at least five related complaints to send out an investigator to a possible site of odor.

Motion: to accept the staff report on the status of the odor control complaint reporting

Motion/Second: Vice Mayor Livengood/Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA 1. CALL TO ORDER Mayor/Agency Chairman Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 10:12 PM.

RA 2. ROLL CALL **PRESENT:** Mayor/Chair Esteves, Vice Mayor/Vice Chair Livengood and Agency/Councilmembers Giordano, Gomez, and Polanski

ABSENT: None

RA 3. MEETING MINUTES Motion: Approve the minutes of December 5, 2006

Motion/Second: Vice Chair/Vice Mayor Livengood /Councilmember Polanski

Minutes approved by a vote of: AYES: 5
NOES: 0

RA 4. Approval of Agenda and Consent Calendar Motion: Approve the Redevelopment Agency agenda and consent calendar

Motion/Second: Agency/Councilmember Giordano/Agency/Councilmember Polanski

Minutes approved by a vote of: AYES: 5
NOES: 0

**RA 5. New Milpitas Library
Project No. 8162 Award of
Contract for Construction**

CIP Manager Mark Rogge reviewed the process of how bids for the library came in and were reviewed by staff, and explained what the Library Subcommittee recommended to the City Council. Contractor S.J. Amoroso with a bid of \$26,957,000 was the winning successful bidder from those opened last Wednesday.

Present at the meeting were Jim Benson, Chief Estimator, and Tom Tichy, Estimator from the contractor, as well as the Chief Executive Officer Dana McManus.

Mr. Rogge reviewed expenditures to date on the library project. Construction was due to start in January, and staff was hopeful that construction would be done in November 2008. Mr. Rogge introduced CEO Dana McManus of S.J. Amoroso, who thanked the Council for the opportunity to build a new library for the City. His company existed since 1939 and builds only public facilities. S. J. Amoroso had completed quite a few new libraries, such as Santa Clara's Central Park Library.

Mr. Rogge updated Council on the project schedule for the parking garage in the midtown/library area, Project No. 8161, which was on target.

Councilmember Polanski thanked staff for the report and for how things were moving along for the new Library.

Mayor Esteves thanked all those involved, and he was pleased the project remained on time and on budget.

Motion: move the following action items:

1. Find that the library project complied with CEQA and the North Main Street Environmental Impact Report (described in staff report).
2. Waived minor bid irregularities, and award the construction contract for the new Milpitas Public Library, Project No. 8162, to the lowest responsible bidder S J Amoroso (base bid for \$26,957,000) including the three recommended add alternates for a total of \$27,153,000, subject to approval by the City/Agency Attorney.
3. Approved an amendment to the Group 4 Architecture contract for construction services in an amount not to exceed \$1,190,000, subject to approval by the City/Agency Attorney.
4. Received oral report, an update on the status of both the Parking Garage and Library construction projects

Motion/Second: Agency/Councilmember Polanski/ Agency/Councilmember Livengood

Motion carried by a vote of: AYES: 5
NOES: 0

*** RA 6. Annual Report of the
Milpitas RDA FY 2005-06**

Received the Milpitas Redevelopment Agency Fiscal Year 2005-2006 Annual Report.

*** RA 7. Resolution Granting
Final Acceptance, Project 8153**

Adopted Resolution No. RA 278 granting final acceptance and release of the bond for Project No. 8153, Utility Relocation Project (Phase I) Weller Ln and Winsor St.

*** RA 8. Authorize the City
Manager to Execute Agreement
Amendment No. 1: Noll & Tam
Architects for the Senior Center**

Authorized the City Manager/Agency Director to execute consulting services agreement amendment with Noll & Tam Architects, in an amount not to exceed \$49,975.00, subject to approval as to form by the City Attorney and as recommended by the Senior Center Facilities Subcommittee, for the new Milpitas Senior Center, Project No. 8176

*** RA 9. Approve Budget
Amendment Appropriating
\$300,000 to the City Attorney
for Public Works Litigation**

Authorized a budget transfer of \$300,000 from the Redevelopment Agency undesignated reserve fund to the City Attorney's Department for public works litigation expenses and approved the issuance of a purchase order to Meyers Nave in the amount of \$300,000 for public works litigation expenses.

RA 10. ADJOURNMENT

Chair/Mayor Esteves adjourned the Redevelopment Agency meeting at 10:29 PM.

REPORT OF OFFICERS & COMMISSIONS

5. Preschool Program Update

This issue was heard prior to the Public Hearings, starting at 7:12 PM.

Mayor Esteves said this subject was on the agenda at his and Councilmember Polanski's request. He supported pre-school always, it was a priority of City budget and services, and should not be cut. He thanked the many parents for calling him.

Councilmember Polanski spoke supporting pre-school throughout her time as a public official in Milpitas.

Vice Mayor Livengood stated that the pre-school program goes back to his time as Mayor in the 1980s, and it was a worthwhile program in the City of Milpitas. He thanked parents for attending the meeting.

Councilmember Gomez noted his children had been in the pre-school program very recently, and knew its value.

Councilmember Giordano thanked the new City Manager Tom Williams, who had only been in his job for four days, and brought forward a reasonable solution. She wanted to take a look at this program on as "as-needed" income-based fee schedule in future.

Recreation Services Supervisor Kathleen Yurchak suggested the proposal of contracting out to California Staffing Services to provide substitute teachers for Milpitas preschool. She reviewed costs associated with the program, and said she and two preschool staff were available to respond to any questions.

Councilmember Gomez appreciated the proposed solution, and sought to understand why was this not brought forward before. Ms. Yurchak responded, that historically the city had not used outside staffing for any Recreation programs, and did not know directly about the qualified teachers available from the agency proposed tonight.

Councilmember Polanski wanted to know if the California Staffing Services would have substitutes, would these be long term teachers from January to June 2007? Staff replied they could be and there was a permanent placement option with the service. Ms. Polanski advised to look at salaries and benefits of the substitute service versus the City's own hires.

Councilmember Giordano wanted all possible solutions to come back in March. If the program continued as now, it was not certain tonight that the program could be continued after June 2007.

Councilmember Livengood wanted to know how did the City ensure that contract employees were checked properly. Staff talked about credentials, the red bag, and Department of Justice background check.

Mayor Esteves asked if the City still would accept walk-in applicants for open positions. Staff said the City was still accepting applications for the pre-school teacher and teacher-aide positions through the Human Resources office. He then announced that preschool will open in January, with normal hours as originally scheduled. He had received letters with more than 100 signatures of support for the Milpitas pre-school program.

The Mayor then asked for audience members who wished to speak to Council.

Speakers:

Reggie Bens, Milpitas resident, spoke favorably toward the pre-school. He asked questions about the process last spring, when programs were prioritized at a public meeting.

Robert Campbell, a Milpitas resident, wanted to encourage staff to involve parents more in the re-shaping of the program going into the future.

Stacey Seay, Milpitas resident, thanked the Mayor for the preschool program support, it was a jewel of the City. She was a financially responsible citizen, had studied the program for her master's degree study. Cost was not the real issue, she believed.

Nelson, Milpitas resident and parent, worked for the San Jose Office of Education, and he was concerned about bringing in a staffing agency. Preschool needed stability for the kids, as far as the teachers go with permanence of teachers for the students.

Eleni, a San Jose resident and parent, noted that the teachers at the preschool were valuable. She did not understand how contracting teachers can come in, and the City let go more valuable ones.

David Matheson, Milpitas school teacher and new homeowner, did not believe that school should be disrupted during the year, that continuity for the children was essential.

Melania Argano, mother of three children, all of whom had gone through Milpitas preschool, felt the teachers deserved more salary and were underpaid for what they do.

Belinda Chu, Milpitas resident, mother of three children who had attended preschool, was pleased that it will continue with dedicated teachers at this school.

Councilmember Polanski asked about the contracting out of employees. Was the proposed contract up to \$44,000, for the period until June 15? Staff replied yes, and that the City could still hire its own teachers.

The Mayor asked if there were any more speakers.

Speakers:

Jerry Epps, Milpitas resident on Mt. Shasta, stated it was heartening to hear the parents speaking out this evening on behalf of their children. He hoped they graciously accept the proposal now and that they would step up and pay more for the preschool service next year.

A gentleman spoke about his little boy who attended preschool. He wanted the City to hire good teachers and keep the pre-school in operation..

A gentleman, reiterated what the City Manager noted, that the issue was a financial issue with the PERS 1,000 hours rule about the part-time teachers. Maybe some of the parents could go work for the staffing agency to volunteer to work at the school.

Councilmembers Gomez and Giordano both asked for this topic to go for review to the Finance and Recreation departments, then present it before the Finance Subcommittee

Motion: authorize the City Manager to approve a contract with California Staffing Services for an amount not to exceed \$44,000 for preschool teachers, provided for the period from January to June 2007

Vice Mayor Livengood asked to include that staff would continue to vigorously recruit preschool teachers through the City Human Resources office.

Motion/second: Councilmember Polanski/Councilmember Gomez

Motion carried by a vote of:

AYES: 5

NOES: 0

The City Council then took a break at 8:10 PM and reconvened at 8:17 PM.

6. Wireless Internet Service in Milpitas

This item was heard after Item No. 4, prior to the RDA meeting.

Mayor Esteves asked for a report from Information Services Director Bill Marion. He announced that on this date, “wi-fi” or wireless internet service for free was launched by Earthlink in Milpitas, as the fourth city nationwide to offer such service.

Audra Hoynacki, General Market Manager from EarthLink Municipal Networks, was present to give an overview to the Council. She was very excited that this was the first day of 30 days free use of Earthlink, with no fees or costs, on an open access format for this first month, from December 19, 2006 until January 17, 2007.

A majority of the City ten square miles was covered, with some small pockets - mostly industrial - that were not. Look for ads in the Milpitas Post and door hangers on residences advertising the service appearing in the City very soon.

Contact information for Earthlink was announced, for more information call 1-866-433-WIFI, or visit the website www.earthlink.net/wifi

Mayor Esteves congratulated Earthlink and our City staff – particularly Mr. Marion - for working together, and bringing this desirable service to our citizens. He thanked the Economic Development Commission for their call to make Milpitas a wireless city.

7. Mayor’s Recommendation for Planning Commission 2007 vacancies

Mayor Esteves announced his recommendations from a pool of 12 applicants. He had given out a questionnaire to 11 candidates on Saturday, December 2, and then one on another date. One late application was received from Alex Galang and the Mayor met with him separately, and the applicant did not answer the questions posed by the Mayor.

(1) Motion: approve the Mayor’s recommendation for appointments (Norman Azevedo, Heidi Pham, Gary Cerezo, and Zeya Mohsin) to the Planning Commission

Motion/second: Councilmember Polanski/Mayor Esteves

Motion failed on a vote of:

AYES: 2 (Esteves, Polanski)

NOES: 3

(2) Motion: re-appoint Norman Azevedo to the Planning Commission to a three-year term that will expire in December of 2009

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of:

AYES: 5

NOES: 0

NEW BUSINESS

8. Transit Area Specific Plan

Senior Planner Dennis Carrington introduced the presentation that would be made to the City Council about the draft Transit Area Specific Plan. Staff had been working closely with consultants Dyett & Bhatia and community stakeholders, reviewing the specific requirements for various types of space in the project area.

Present to speak to the Mayor and Council were: Leslie Gould of Dyett & Bhatia, architect David Paoli of Field Paoli, and economic consultant Bill Lee of Economic Research Associates.

Vice Mayor Livengood asked about restaurants that might want to stand alone, from the designed retail/residential mix. Mr. Paoli replied restaurants that the City may want to seek out those that were more forward and flexible to fit in to the new designs. Mr. Livengood felt it was important to keep the City flexible too.

Mr. Lee discussed the amount of retail space in this plan. Originally, planning was over a 15-20 years time frame, but now one of the owners urgently wanted to lease space out. So, a recommendation for an update to the plan, changing some of the square feet was presented including the requirement to increase the CFD cost annually to property owners (along the lines of an increase from \$350 to \$450).

Vice Mayor Livengood referred to a letter Council had received from property owner Carl E. Berg. He then asked Leslie Gould how does the City maintain good relations with the significant property owners. She stated the stakeholders, including significant property owners, continue to work closely with planners on the Transit Area Plan.

Averaging of densities was going to be part of the plan. Mr. Crawford, an attorney for Mr. Berg, was present to respond to Ms. Gould's remarks. He noted that items requested by his client were itemized in the letter to Council. Mr. Livengood further commented in response to Mr. Crawford's remarks, and wished to remain respectful of the property owners in that area of the city.

A representative of the Santa Clara Valley Transportation Authority was present at this meeting. She said VTA and the City had been working on a concept plan for the station area around the future BART station. Staff would present this plan on January 16, 2007 with a detailed update.

Motion: approve proposed zoning changes and density changes in the Draft Preferred Transit Area Plan, yielding a reduction of 76 units of residential, with an increase of 180,000 sq. ft. of office space, and a reduction of 232,951 sq. ft. of retail space

(These numbers are as noted on page 2 of the memo from Dyett & Bhatia to the City Council for this meeting.)

Motion/second: Vice Mayor Livengood/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

ORDINANCES

11. Traffic Ordinance No. 43.205

City Engineer Greg Armendariz introduced the staff recommendation to change speed limits on sections of N. Park Victoria Dr, and on Great Mall Parkway. The recommendation was presented as the result of recent traffic studies.

City Attorney Mattas read the title of proposed Ordinance No. 43.205 "An Ordinance of the City Council of the City of Milpitas Amending Chapter 100, Title VI of the Milpitas Municipal Code Related to Traffic."

(1) Motion: Waive the first reading beyond the title of Ordinance No. 43.205

Motion/second: Vice Mayor Livengood/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(2) Motion: Introduce Traffic Ordinance No. 43.205

Motion/second: Vice Mayor Livengood/Councilmember Polanski

Motion carried by a vote of:

AYES: 5

NOES: 0

12. Open Government Ordinance Amendment

Councilmember Gomez introduced the recommendation from the Open Government Subcommittee. The Subcommittee recommended an ordinance that would continue the existence of the City Council Subcommittee, in place of an Open Government Commission. If adopted the ordinance would go into effect 30 days after adoption.

Councilmember Polanski announced her opposition to this proposal. She asked for and explanation about assignment of City Attorney, per the ordinance. City Attorney Mattas explained the different attorney from his firm who works to advise the Subcommittee, in order to maintain an “ethical wall” from the advice that he would ordinarily provide to the Council and staff. She reiterated her opposition to the Subcommittee, and preferred the concept of a citizen’s Commission.

Mayor Esteves announced his opposition to this change, and wanted to conform to his initial opposition to the Council Subcommittee.

Mayor Esteves invited speakers from the audience.

Speakers:

Rob Means, of Yellowstone Ave, noted that when speaking of oversight of government, Subcommittees are not the way to get things done. He referenced the national U.S. government. Mr. Means strongly felt the need for a citizen-based impartial body for open government.

Maria Lemery, Milpitas resident, stayed late at the City Council meeting to speak on this issue. Her belief was that something was wrong with only two Councilmembers on the Subcommittee. It required impartial people, or others on the subcommittee besides the two serving on it.

Tim Howard, 491 Simas Dr., was disheartened by what was proposed with this subcommittee. He wanted a Commission of residents, those not running for election.

Laura Mello, believed when electing representatives to government, she expected their actions to be above board. She would prefer a citizens body.

Vice Mayor Livengood noted that the way the Open Government ordinance was written was not as an oversight committee over the Council. It had more to do with public records and information, for informing the public. It would look at ways of opening up the process of Planning Commission selection of members, for example.

City Attorney Mattas read the title of proposed Ordinance No. 262.4 “An Ordinance of the City of Milpitas to Repeal Section I-310-4.10 of the Milpitas Municipal Code in its Entirety, to add a New Section I-310-4.10 of the Milpitas Municipal Code, and to Amend All references to the “Open Government Commission” in Title I, Chapter 310 to Refer to “Open Government Subcommittee” .”

(1) Motion: Waive the first reading beyond the title of Ordinance No. 262.4

Motion/second: Vice Mayor Livengood/Councilmember Giordano

Motion carried by a vote of:

AYES: 5

NOES: 0

(2) Motion: Introduce Ordinance No. 262.4, an amendment to the Open Government Ordinance in the City of Milpitas

Motion/second: Vice Mayor Livengood/Councilmember Giordano

Motion carried by a vote of:

AYES: 3

NOES: 2 (Esteves, Polanski)

RESOLUTIONS

Three items were adopted on the Consent Calendar.

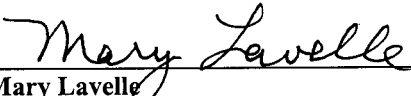
BIDS AND CONTRACTS

Two items were adopted on the Consent Calendar.

ADJOURNMENT

Mayor Esteves adjourned the meeting at 11:35 PM.

The foregoing minutes were approved by the Milpitas City Council as submitted on January 2, 2007.



Mary Lavelle
City Clerk